

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 7

Daniel Gallagher,

Case No. 8-23-70994-las

Debtor.

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**SECURED CREDITOR LIMITED RESPONSE TO TRUSTEE’S MOTION TO SELL
PROPERTY OF THE ESTATE FREE AND CLEAR OF LIENS UNDER 11 U.S.C 363**

U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF2 ACQUISITION TRUST ("Secured Creditor"), hereby files this Limited Response (the "Response") to the Chapter 7 Trustee’s Motion to Sell Property of the Estate Free and Clear of Liens under 11 U.S.C 363(f) (the "Motion") [Docket No. 17], and in support thereof, states as follows:

1. Secured Creditor holds a security interest in the real property owned by Daniel Gallagher (the "Debtor") located at 1640 Sterling Road, Cutchogue, NY 11935 (the "Property") by virtue of a pre-petition mortgage loan and lien (the "Mortgage Loan"), which is valid and enforceable.
1. On June 12, 2023, Robert Pryor, the chapter 7 trustee (the "Trustee") filed the Motion which seeks authority to sell the Property through a public auction process and pursuant to various terms and conditions as set forth therein and pursuant to Bankruptcy Code section 363.
2. The Trustee’s proposed auction terms and conditions are set forth in an exhibited Terms and Conditions of Sale – see, Motion exhibit A (the "Sale Terms"), with the auction to be open from August 15, 2023 11:00 AM through August 17, 2023 at 11:00 AM.
3. The Sale Terms does not state a floor or upset price for bids, and the Motion does not give any indication of a value that the trustee has determined for the Property. The Motion

only states “It is the trustee’s belief that based upon his informal valuation of the Real Property the bankruptcy estate will benefit from the sale... provided that as expected the proceeds of sale exceed the amounts due and owing on the first mortgage.” See, Motion, Para 4. The first mortgage referred to is the Mortgage Loan.

4. At present, the pay off amount for the Mortgage Loan is \$706,362.13 (as of July 1, 2023). That amount will of course increase with interest accrual after July 1 and until the date of an actual closing of any approved sale of the Property. The amount necessary to satisfy the Mortgage Loan in full is subject to final verification and be based on a pay-off calculation that is done once a sale closing date is scheduled.
5. Secured Creditor will provide the Trustee with an updated payoff letter at or near the scheduled closing of the sale of the Property as may be ultimately approved by the Court.
6. Secured Creditor does not object to the proposed sale of the Property to the extent that any sale is subject to Secured Creditor’s valid, perfected and pre-petition lien under the Mortgage Loan and that the total amount due as of closing will be paid in full at the closing directly to Secured Creditor in accordance with instructions to be provided in a final “pay off” letter. With the receipt of such funds to satisfy the Mortgage Loan in full an appropriate release or satisfaction of mortgage lien, in recordable form, will be provided to the Trustee.
7. Secured Creditor does not agree or consent to any carve-out from the sale proceeds necessary to satisfy the Mortgage Loan or credit on account of any costs of the sale by the Trustee, including commissions or expenses of professionals, nor for the benefit of any creditors that may hold allowed other administrative, priority or general unsecured claims.
8. Secured Creditor reserves the right to supplement this response at or prior to any hearing on this matter.

WHEREFORE, Secured Creditor respectfully requests that any approval of the Motion and any order entered thereupon provide for the satisfaction in full of the Mortgage Loan from proceeds of sale and that such payoff amount be paid at the closing directly to Secured Creditor and for such other and further relief as the Court deems just and proper.

Dated: Westbury, New York
July 11, 2023

ROBERTSON, ANSCHUTZ, SCHNEID,
CRANE & PARTNERS, PLLC
Attorney for Secured Creditor
900 Merchants Concourse
Suite 310
Westbury, NY 11590
Telephone: (516) 280-7675

By: /s/ Kevin R. Toole
Kevin R. Toole, Esq.
E-mail: ktoole@raslg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 11 2023, I caused the electronic filing of the foregoing Limited Response to Trustee Motion to Sell Property with the Clerk of Court using the CM/ECF system, and a true and correct copy has been served via CM/ECF and United States Postal Service First Class Mail to the following parties:

Daniel Gallagher
1640 Sterling Road
Cutchogue, NY 11935

Richard F. Artura, Esq.
Phillips, Artura & Cox
165 South Wellwood Avenue
Lindenhurst, NY 11757

Robert L. Pryor, Trustee
Pryor & Mandelup LLP
675 Old Country Road
Westbury, NY 11590

United States Trustee
Long Island Federal Courthouse
560 Federal Plaza - Room 560
Central Islip, NY 11722-4437

ROBERTSON, ANSCHUTZ, SCHNEID,
CRANE & PARTNERS, PLLC
Attorney for Secured Creditor
900 Merchants Concourse, Suite 310
Westbury, NY 11590
Telephone: (516) 280-7675

By: /s/ Kevin R. Toole
Kevin R. Toole, Esq.
E-mail: ktoole@raslg.com